

Docket No. F-7890

Ser. No. 10/621,765

**REMARKS**

Claims 1 and 4-12 are now in this application. Claims 4-7 have been withdrawn. Claims 1 and 9 are amended herein to clarify the subject matter of the invention. New claims 10-12 are added.

Applicant herein traverses and respectfully requests reconsideration of the rejection of the claims and objections cited in the above-referenced Office Action.

The examiner objects to the drawings under 37 C.F.R. § 1.83(a) for failing to show every feature of the invention specified in the claims. It is alleged that the drawings do not show the outer edges as having spaced depressions and that they further allegedly fail to show twisting prevention devices which include spaced lugs, according to claim 1. Applicant respectfully reminds the Examiner that an election of species was made final in the Office Action mailed February 18, 2005, in which it was acknowledged that Species D (Figs. 18 and 19) was elected with traverse. Drawing the Examiner's attention to these figures, as well as the description at the last full paragraph of page 6, it is readily apparent that each and every feature claimed is shown. Specifically, spaced depressions 21 in the region of the outer edges of the rail support, and spaced lugs 22 protruding over the lower support surface, are depicted. In view of the foregoing, reconsideration of the objections to the drawings is earnestly solicited.

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Claim 9 is objected to for imprecise phrasing and clarity. Claim 9 is amended according to the Examiner's suggestion. Therefore, withdrawal of the objection is respectfully requested.

Claims 1, 8 and 9 are rejected as indefinite under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter of the invention. The Office Action asserts that various phraseology is unclear. This rejection is traversed as follows.

These rejections, as well as the Examiners sweeping comment in the Response to Arguments paragraph of the Office Action that the new grounds of rejection as based upon "various confusing terms," appear to be mistakenly based, in part, upon the same oversight noted above, i.e., which neglects to account for the fact that the claims are directed to the elected embodiment shown in Figs. 18 and 19. It is apparent from these figures that the embodiment depicted therein does not show lugs 16 in the support area, but rather depressions 21. Similarly, regarding the alleged depressions in the guide plates, Figs. 18 and 19 actually show lugs 22, as claimed.

It is respectfully submitted that the Examiner is also misreading claim 1, wherein the recitation is not that deep depressions exist beneath said guide plates, but rather indicates "said support area being essentially flat without continuous,

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deep depressions beneath said guide plates" (emphasis added), i.e. that the support area is free of deep depressions.

The basis of the rejections as relating to the lack of antecedent basis of claim 9 has been addressed.

Based upon the foregoing, reconsideration of the rejection of claims 1, 8 and 9 and their allowance are earnestly requested.

Claims 1, 8 and 9 are rejected as obvious over The Prior Art Drawing or the Mohr reference (US 6,488,215) in view of McCormick et al. (US 4,078,724) under 35 U.S.C. §103(a). The applicant herein respectfully traverses this rejection. For a rejection under 35 U.S.C. §103(a) to be sustained, the differences between the features of the combined references and the present invention must be obvious to one skilled in the art.

It is respectfully submitted that a *prima facie* case of obviousness could not be established in rejection of amended claims 1, 8 and 9. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or

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suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." MPEP §706.02(j) "Contents of a 35 U.S.C. §103 Rejection".

Claim 1 and 9 both require a rail support for supporting a rail in an orientation extending in a crosswise direction of the rail support and guiding plates receivable thereto which include depressions on the rail support or the guiding plates which are spaced apart in a crosswise direction of the assembled rail support including guiding plates and, correspondingly positioned to lugs on the other of the rail support or guiding plates which engage the depressions to prevent or inhibit twisting. It is respectfully submitted that neither cited reference teaches this structural feature, and therefore the combination of references fails to support a *prima facie* case of obviousness.

The primary Prior Art Drawing and Mohr contain no disclosure relating to depressions which are spaced apart in a crosswise direction of a rail support. Rather, these references teach a continuous, relatively deep depression in the concrete tie serving as a twisting prevention feature when a corresponding protruding continuous rib is received therein. The disadvantages of such construction is, in fact, the very drawback addressed by the invention, as discussed in the background section of the specification. Such drawback is overcome by the

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claimed invention which provides depressions and lugs which are spaced apart in the crosswise direction of the rail support and guiding plates, such that the provision of deep, continuous depressions in the rail support is obviated.

Applicant submits that the secondary McCormick et al. reference fails to adequately supplement the primary references discussed above, by also neglecting to provide the presently claimed features. It is clear from a reading of the McCormick et al. reference, that the twist prevention devices (a part of which, reference numeral (32), was referred to by the Examiner in the Office Action) comprise an anchor member embedded and fixed in the crosstie at a time of pouring the concrete. As such, the reference is devoid of teaching relating to the provision of spaced apart depressions for engaging lugs on given ones of the rail support and guiding plates. Moreover, the Office Action fails to identify any structure in McCormick et al. that could even be deemed remotely analogous to the claimed structural recitation.

Thus, it is respectfully submitted that the rejected claims are not obvious in view of the cited references for the reasons stated above. Reconsideration of the rejections of claims 1, 8 and 9 and their allowance are respectfully requested.

The USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

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In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,

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